

WALTER W. HUSH, SR.

IBLA 83-564

Decided January 30, 1984

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W-84236.

Vacated and remanded.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filings

Where a simultaneous oil and gas lease application is dated prior to the commencement of the filing period, and it is established that such misdating was merely inadvertent and not done with an intent to obtain a lease by fraud, and that the application was signed during the filing period, the misdating is a non-substantive error which does not require the rejection of the application.

APPEARANCES: Walter W. Hush, Sr., pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Walter W. Hush, Sr., was the first-drawn applicant for parcel WY-301 in the simultaneous oil and gas lease drawing held in February 1983. On March 24, 1983, the Wyoming State Office, Bureau of Land Management (BLM), issued a decision rejecting the application. BLM stated:

Regulation [43 CFR] 3112.1-2 states, in part: "At the start of business on the first working day of January, March, May, July, September and November, a list of [the] lands [for which applications shall be received] shall be posted. . . . The list shall include [a] notice stating that such lands are subject to the filing of lease applications from the time of such posting[,] until the close of business on the fifteenth working day thereafter." Regulation [43 CFR] 3112.2-1(c) states, in part: ". . . The date shall reflect that the application was signed within the filing period." (emphasis added) Regulation 43 CFR 3112.6-1(a) states, in part: "IMPROPER FILING. Any

application which is not filed in accordance with § 3112.2 of this title . . . shall be rejected. <sup>1/</sup>

We have reviewed your application for Parcel WY-301 and find that the application is dated January 11, 1982 (11 Jan. 82), which is not within the filing period for the January 1983 filings. A copy of your application is enclosed.

Hush appeals from BLM's rejection of March 24, 1983, on a variety of grounds. He maintains that the date and signature on his application clearly show that the application was signed during the filing period "except for one digit of the date being incorrect." The envelope in which his application was mailed bears a postmark of January 12, 1983, Hush contends, and the check accompanying his application is said to have been issued during the filing period.

Hush further states that parcel WY-301 was described, advertised, and offered for lease only during the filing period January 3, 1983, through January 21, 1983, and as such, was applied for during that period. The description, location, and acreage as advertised are not applicable to any prior (January 1982) filing period, he claims.

Finally, he notes that an error of the type occurring here is common at the beginning of a new year. Indeed, the cover page of BLM's notice of lands available for filing repeats this same error, he claims.

In the past this Board has consistently held that an application which bears a date prior to the filing period violates the requirement that an application be dated and reflect that it was signed during the filing period. Richard L. Kahn, 71 IBLA 120 (1983), and cases cited therein. We have held that the responsibility for any error in the dating of the application, even though inadvertent and not representative of the actual date of signing, rests with the applicant, Raymond N. Joeckel, 68 IBLA 195 (1982), and that strict compliance with the requirements of 43 CFR 3112 is required to protect the rights of other qualified applicants. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, 544 F.2d 1067 (10th Cir. 1976).

[1] The recent Tenth Circuit Court of Appeals case, Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), however, casts considerable doubt on the viability of decisions rejecting applications automatically for failure of the date to reflect that the application was signed during the filing period. The Tenth Circuit Conway decision reversed the Federal District Court's decision in Conway v. Watt, No. C82-0029 (D. Wyo. July 12, 1982), which had affirmed the Board's decision in Joe Conway, 59 IBLA 314 (1981). This Board had held in Conway that failure to date a simultaneous oil and gas lease application required rejection of the application.

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<sup>1/</sup> On July 22, 1983, 43 CFR Subpart 3112 was amended, effective Aug. 22, 1983. 48 FR 33648, 33678. Those regulations also require that the date reflect that the application was signed within the filing period. 43 CFR 3112.2-1(c), 48 FR 33678.

The appeals court stated in Conway at page 516:

[A]lthough offers to lease must strictly comply with the Secretary's regulations, this court has consistently intimated that non-substantive errors are inappropriate grounds for finding DEC [drawing entry card] applications defective. Ahrens v. Andrus, [690 F.2d 805 (10th Cir. 1982)] at 808; Winkler v. Andrus, 594 F.2d 775, 777-78 (10th Cir. 1979). \* \* \*

Inasmuch as the great weight of judicial authority places little or no emphasis on the absence of a date, Conway's failure to date his DEC would indeed appear to be a de minimis, a non-substantive error.

Thus, the court concluded that although a date could be required, the failure to date could not be a per se disqualification, and that if the Secretary was concerned with fraud, he could require evidence that the application was signed on a qualifying date and that all other qualifications were satisfied as of that date. Conway v. Watt, *supra* at 517.

The present case does not involve a failure to date; rather the application in this case was misdated. As commonly occurs, one dating a document at the beginning of a new year has a tendency to carry over the prior year's date. Thus, in this case the date January 11, 1983, was misstated as January 11, 1982.

The record contains evidence that the misdating in this case was merely inadvertent, that the application was actually signed within the filing period, and that there was no intent to fraudulently obtain a lease. This is a proper case for the application of the Conway rationale that nonsubstantive errors are inappropriate grounds for rejecting simultaneous oil and gas lease applications. Amberex Corp., 78 IBLA 152 (1983); *see* Charles Fox and George H. Keith, Partnership, 77 IBLA 199, 203 (1983).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case is remanded.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge  
Alternate Member

Bruce R. Harris  
Administrative Judge.

